



Comptroller General
of the United States

Washington, D.C. 20548

458253

Decision

Matter of: Abacus Enterprises--Reconsideration

File: B-248969.2

Date: March 24, 1993

Steve Scharosch for the protester.
Ned A. Greene, Department of Agriculture, for the agency.
C. Douglas McArthur, Esq., and Christine S. Melody, Esq.,
Office of the General Counsel, GAO, participated in the
preparation of the decision.

DIGEST

1. Specific allegations, pertaining to evaluation of protester's proposal, first raised in comments on agency report were untimely filed where not raised within 10 days of when the protester learned the basis for protest, i.e., when it received detailed evaluation results.
2. Party seeking reversal or modification of prior decision must convincingly show that decision contains either error of fact or law or information not previously considered that warrants its reversal or modification.

DECISION

Abacus Enterprises requests that we reconsider our prior decision, Abacus Enters., B-248969, Oct. 13, 1992, 92-2 CPD ¶ 242, in which we denied its protest of the award of a contract to ESSA, Ltd., under request for proposals (RFP) No. RM-92-19, issued by the Forest Service for development of training models and materials. Abacus contended that the agency's failure to hold discussions conflicted with the solicitation's emphasis on the technical quality of proposals.

We deny the request for reconsideration.

On March 10, 1992, the agency issued the solicitation for a firm, fixed-price contract for development and testing of a west-wide pine beetle model; development of user manuals, training materials, and software; and the conduct of workshops to demonstrate the model on test stands, evaluate its behavior, and modify it for use in the major pine ecotypes in the western United States and southwest Canada. The

agency reserved the right to make award on the basis of initial offers, without discussions, to the responsible offeror whose proposal was most advantageous to the government.

The RFP identified two factors for award, technical quality and price. The technical evaluation was to consider three criteria---quality of proposal, described as "extremely important" and worth 20 points in the evaluation; qualification of project team; and organization's experience, with the two latter criteria described as "very important" and worth 15 points each. Price was described as "important," with its degree of importance increasing with the quality of proposals.

The agency received two proposals and submitted them to its technical evaluation team. The evaluation team rated the proposal of ESSA higher under each of the technical criteria, with an average total score of 44.7 points versus an average total score of 31.3 points for the protester. The price of the protester's proposal, \$391,341.08, was higher than ESSA's price of \$299,943. Based on its clear technical superiority and much lower price, ESSA received the contract award on May 8.

On June 5, Abacus filed a protest with our Office, requesting a ruling as to the validity of the award. The protester took exception to four elements of the evaluation of its proposal: that the evaluators criticized the protester's proposal for proposing too many meetings; that its price was too high; that it proposed no color graphics; and that it failed to discuss all team members in its proposal. The protester contended that the agency did not use a quantifiable scoring system;¹ award should not be made to a non-American (Canadian) firm and the solicitation was vague;² the agency had another contracting officer sign the contract when the original contracting officer left on maternity leave;³ and ESSA lacked sufficient experience to

¹The agency report demonstrated this allegation to be factually incorrect.

²These two contentions were untimely, since they related to solicitation defects, i.e., the solicitation contained no domestic preference provision.

³The protest did not establish that the protester was prejudiced by the change in contracting officers, and such prejudice is not apparent on its face. Such prejudice is an essential element of a viable protest. Lithos Restoration, Ltd., 71 Comp. Gen. 367 (1992), 92-1 CPD ¶ 379.

perform.⁴ The protester also contested the agency's decision to award a contract without discussions.

On June 8, the agency provided a complete copy of the evaluation results, including each individual reviewer's comments, to the protester. On July 9, the agency submitted its report to our Office. On July 27, 7 weeks after receiving the details of the technical evaluation, Abacus filed detailed comments with our Office, taking issue with every one of the evaluation findings and raising additional areas where the evaluation was unreasonable, in addition to the four areas raised in its initial protest.

These allegations were untimely. When a protester supplements its protest with new and independent allegations, those allegations must independently satisfy our timeliness requirements; the applicable regulations do not contemplate the unwarranted piecemeal presentation of protest issues. Berkshire Computer Prods., B-246337, Dec. 18, 1991, 91-2 CPD ¶ 564. The record shows that the protester had been aware of the full evaluation results since early June, when the agency provided the protester with a verbatim copy of the written evaluation. To the extent that the protester wished to raise additional issues relating to the evaluation, it was obliged to do so within 10 days of receiving the evaluation results, or, presuming 5 days for receipt of the evaluation material, by June 29. See 4 C.F.R. § 21.2(a)(2); LightningMaster Corp.--Recon., B-236323.3, Oct. 3, 1989, 89-2 CPD ¶ 291.

Nevertheless, our Office provided a general review of the evaluation, which we found to be reasonable and consistent with the solicitation. Since we found that the record generally supported the evaluators' judgment that the awardee had submitted the superior proposal, and since that proposal was significantly lower in price, we concluded that award on the basis of initial proposals, without discussions, was proper. Professional Safety Consultants Co. Inc., B-247331, Apr. 29, 1992, 92-1 CPD ¶ 404.

In requesting reconsideration, the protester argues that our original decision contained several misstatements of fact and failed to address numerous issues raised in its protest comments. As previously noted, to the extent that we did not address every point raised by the protester regarding the evaluation, Abacus's contentions were, almost entirely, untimely. The protester concedes that it received the

⁴Our decision did not address this contention because it involves the agency's affirmative determination of responsibility, an issue that our Office does not review. 4 C.F.R. § 21.3(m) (1992).

evaluation results several weeks prior to challenging them, but asserts that it was essential to obtain the point scoring before protesting the evaluation; since, however, Abacus indicates that it received the point scores on July 8, 15 working days before it submitted its comments, we see no reason to address again the numerous untimely allegations made in the protester's comments.

Abacus takes specific exception to that portion of our decision that addressed the agency's comment that Abacus simply proposed too many meetings. In our original decision, we noted that under factor 1, quality of proposal, firms were to be evaluated for their detailed plan for all project phases, including the management and coordination of consultant efforts; the protester's proposed project schedule called for most of its workshops and technical meetings to be held in the summers of 1992 and 1993. The agency downgraded the protester's proposal because the majority of the participants (research entomologists, pest management specialists and silviculturists) who, under the solicitation's work statement, were to provide the expertise and guidance for the project at these workshops and meetings, would be unavailable during the summer when these scientists generally conduct field work. Although the protester argued that the schedule was dictated by the agency's March 1 start date, we found no basis for such an assertion, since there was nothing in the solicitation which required that the workshops and meetings be held in the summer. The awardee's schedule managed to avoid numerous summer meetings, and we concluded that the evaluators reasonably viewed Abacus's initial proposal as less desirable than the awardee's in this respect.

The protester charges that we misstated the facts. The solicitation, Abacus notes, required an initial post-award meeting, with the model development core group, to prepare for the first of three workshops, the model design workshop, by July 31; two subsequent workshops would deal with a review of the model prototype, by November 30, and a presentation to users, by June 30, 1993. The solicitation also called for a training session by December 31. In addition, the solicitation calls for "several meetings" during prototype development (between the first two workshops) and "joint . . . meetings" in the model revision stage (between the last two workshops). The protester contends that "several meetings" means at least three, to be held between May and July 1992, while joint "meetings" means at least two, to be held by June 30, 1993.

The agency points out that the solicitation only specifies five meetings--the post-award, the three workshops, and the training session. The initial meeting and the first workshop were to take place in June and July, 1992; both offerors proposed combining the model presentation workshop with one of the technical meetings, with the awardee proposing an April meeting and the protester proposing to meet in June, 1993. The awardee proposed six meetings in all, with the final training session scheduled for between August 6 and September 2, 1993.


The protester, by contrast, proposed 14 meetings, including 10 technical meetings, in addition to the training session. Seven of these 10 meetings are scheduled for late May through early September; further, Abacus's proposal specifically warned that it would "not be responsible for time or cost overruns" should the agency staff not be "available for monthly meetings on a timely basis." Abacus's proposal stated that the protester expected the agency core group to share responsibility for data analysis, reporting, and workshop organization, or it would not be responsible for the cost and schedule effect. Therefore, we think that the concern of the evaluators--that the proposal involved excessive involvement of pest managers/silviculturists and users and showed excessive dependence on the agency for analysis and guidance on how to proceed--was reasonable. Based upon our review of the proposals, we see no reason for modifying our original conclusion that the evaluation in this area was reasonable and consistent with the solicitation.

We note further that under factor 3, organization's experience, the protester declined to provide either the agency or our Office any meaningful information on its past contracts, contending that the information was "privileged." We find this position unreasonable, and we note that even if Abacus received maximum point scores for the other two technical factors, its total score would be less than the awardee's based on this deficiency alone. In the context of whether the agency might therefore reasonably decide to award a contract based on initial proposals, the protester has effectively declined to provide our Office with any grounds for sustaining the protest, given the great disparity in price and technical factors between Abacus's initial proposal and that of the awardee.

To obtain reversal or modification of a decision, the requesting party must convincingly show that our prior decision contains either error of fact or law or information not previously considered that warrants its reversal or

modification. 4 C.F.R. § 21.12(a); Gracon Corp.--Recon.,
B-236603.2, May 24, 1990, 90-1 CPD ¶ 496. The protester
provides no basis for granting its request for
reconsideration.

The request for reconsideration is denied.


for James F. Hinchman
General Counsel